

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

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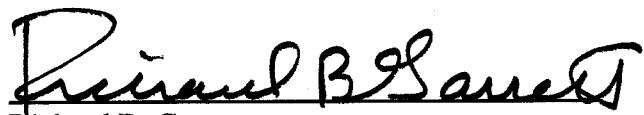
CLIFFORD BAILY, CLIFFORD BLACK,) 2006 OCT 30 P 3:40
WESLEY CALHOUN, CURTIS DEASON,) DEBRA P. HACKETT, CLK
RUTH GRAVES, MICKEY GRIZZARD,) U.S. DISTRICT COURT
JIMMY PERRY, HERBERT STANLEY SIKES,) MIDDLE DISTRICT ALA
And PHILLIP THOMPSON,)
)
Plaintiffs,)
)
vs.) CASE NUMBER: CV-
MERCK & CO., INC., a foreign or) 3:06CV979-M
Domestic Corporation, DAVID SPARKMAN,) H
KATHERINE HOLMES, LORI LOVETT,) T
SCOTT BARTLETT, CORAL HARPER,)
MELISSA SANTIAGO, HENRY MITCHAM,)
JERRY PHARR, JASON DELK, CHARLES)
HENDERSON, JAMES HOUSTON, JULIE)
MELTON, JULIE HODGES, MELISSA)
BAUER, NATASHA WALKER-MCGLOTHAM)
RANDY WELLS, and the Defendants A,)
B, C, D, E, X & Z whether singular or)
plural, being those persons, firms or)
entities who or which proximately)
caused or contributed to the Plaintiff's)
and Plaintiff's decedent's other harm)
and the other damages as complained)
of herein whose true names are)
unknown to the Plaintiff but will be)
added by amendment when correctly)
ascertained,)
)
Defendants.

Removed from the
Circuit Court of
Randolph County, Alabama
(CV-06-145)

MOTION TO DISMISS

Without waiving any other defense he may have to this lawsuit, Defendant **James Houston** moves to dismiss the Plaintiffs' Complaint, under Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief can be granted. In support of this

motion, Houston states that he has been fraudulently joined to this action, and incorporates the legal arguments, citations, and exhibits in Merck & Co., Inc.'s Notice of Removal.



Richard B. Garrett
One of the Attorneys for Defendant,
Merck & Co., Inc.

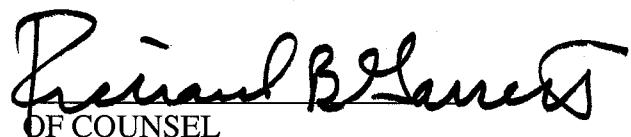
OF COUNSEL:

Robert C. "Mike" Brock
F. Chadwick Morriss
Ben C. Wilson
Richard B. Garrett
RUSHTON, STAKELY, JOHNSTON, & GARRETT, P.A.
Post Office Box 270
Montgomery, Alabama 36101-0270
Telephone: (334) 206-3100
Facsimile: (334) 262-6277

CERTIFICATE OF SERVICE

I hereby certify that I have served the above and foregoing document upon all interested parties by placing a copy of same in the United States Mail, postage prepaid and properly addressed on this 30th day of October 2006, as follows:

James S. Hubbard
Thomas J. Knight
HUBBARD & KNIGHT
1125 Noble Street
Anniston, Alabama 36201


OF COUNSEL